

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Case No.: 5:88-cr-00076-RDP</b>
<b>MICHAEL R. POSEY,</b>	)	<b>Case No.: 1:92-cr-00143-RDP</b>
	)	
<b>Defendant.</b>	)	

**MEMORANDUM OPINION & ORDER**

On September 7, 2018, the Magistrate Judge entered a report and recommendation addressing three motions (Docs. 17, 18, 23) filed by the defendant, Michael R. Posey. (Doc. 25).<sup>1</sup> The Magistrate Judge recommended as follows:

Posey's Rule 35 motion (Doc. 17) be **DISMISSED AS MOOT** or, in the alternative, **DENIED**;<sup>2</sup> Posey's request for *nunc pro tunc* designation of the Alabama Department of Corrections as his place of confinement for his federal sentences (Doc. 23 at 5) be **DISMISSED AS MOOT** or, in the alternative, **DISMISSED** because the court lacks jurisdiction under 18 U.S.C. § 3582(c) to entertain the request; Posey's request that the court not object to any credit the BOP grants towards his federal sentences for time spent in state custody prior to commencement of those sentences (Doc. 23 at 5) be **DISMISSED AS MOOT**; and Posey's motion requesting that the court appoint him counsel and review his Rule 35 motion (Doc. 18) be **DISMISSED AS MOOT**.

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<sup>1</sup> The document numbers cited herein refer to Case No. 88-00076. Posey filed the motion docketed in Case No. 88-00076 as Document No. 23 in Case No. 92-00143, as well. The motion is docketed as Document No. 17 in Case No. 92-000143.

<sup>2</sup> Posey made this motion pursuant to the version of Rule 35 of the *Federal Rules of Criminal Procedure* in effect prior to November 1, 1987.




(Doc. 25 at 12). The Magistrate Judge noted the parties had fourteen (14) calendar days to file any objections to the report and recommendation. (*Id.* at 12-14). Neither party has objected.

After consideration of the record in this case, the court **ADOPTS** the report of the Magistrate Judge and **ACCEPTS** her recommendations. Accordingly, Posey's Rule 35 motion (Doc. 17) is **DISMISSED AS MOOT** or, in the alternative, **DENIED**; (2) Posey's request for *nunc pro tunc* designation of the Alabama Department of Corrections as his place of confinement for his federal sentences (Doc. 23 at 5) is **DISMISSED AS MOOT** or, in the alternative, **DISMISSED** because the court lacks jurisdiction under 18 U.S.C. § 3582(c) to entertain the request; (3) Posey's request that the court not object to any credit the BOP grants towards his federal sentences for time spent in state custody prior to commencement of those sentences (Doc. 23 at 5) is **DISMISSED AS MOOT**; and (4) Posey's motion requesting that the court appoint him counsel and review his Rule 35 motion (Doc. 18) is **DISMISSED AS MOOT**.

The Clerk is **DIRECTED** to mail a copy of this memorandum opinion and order to the defendant.



**DONE** and **ORDERED** this November 5, 2018.



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**R. DAVID PROCTOR**  
UNITED STATES DISTRICT JUDGE